

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy
And Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**APPLICATION FOR REHEARING OF DECISION 07-09-040 OF THE
COGENERATION ASSOCIATION OF CALIFORNIA
AND THE
ENERGY PRODUCERS AND USERS COALITION**

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October 25, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION
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**APPLICATION FOR REHEARING OF DECISION 07-09-040 OF THE
COGENERATION ASSOCIATION OF CALIFORNIA
AND THE
ENERGY PRODUCERS AND USERS COALITION**

The Cogeneration Association of California (CAC)¹ and the Energy Producers and Users Coalition (EPUC)² (jointly, CAC/EPUC) submit this Application for Rehearing of Decision 07-09-040, issued September 25, 2007. The Application is submitted pursuant to Article 16 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and Section 1731 of the Public Utilities Code.

¹ CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

² EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company - California.

Decision 07-09-040 is by any measure a watershed decision for California's long and successful cogeneration program. There are features of the Decision's Prospective QF Program to acknowledge as positive, supportive and essential for any successful future QF policy. There are other features, unresolved questions, and seemingly conflicting directives, however, which remain to be addressed through the upcoming workshop process. As these key implementation issues are addressed through the workshop process, it is prudent for concerned parties to identify any legal error in the Decision to ensure that appellate rights are appropriately preserved.

CAC/EPUC, through the hearing process, briefs, and comments have identified two areas where the Decision is inconsistent with established law.

First, PURPA and California Public Utilities Code §390(b) remain in full force and effect. PURPA requires must take power at avoided costs; avoided costs are clearly defined as the incremental costs which the utility would incur "but for" the purchases from QFs. 18 C.F.R. §292.101(6). Additionally, Public Utilities Code §390(b) sets forth the clear calculation requirements for SRAC energy payments.³ Pricing under the Prospective QF Program does not strictly meet these requirements. Additionally, CAC/EPUC submitted multiple motions and pleadings specifically requesting expeditious relief from SCE's outdated as-

³ CAC/EPUC Comments on the Proposed Decision of ALJ Halligan (May 25, 2007) at 24.

available capacity price and setting forth the bases for that relief.⁴ The Decision did not address and remedy the record objections to the flawed SCE as-available capacity pricing.⁵ To the extent that the Decision is inconsistent with existing law, the Decision is in error.⁶

Second, the Decision's reliance on the current record, which did not allow QF parties access to relevant data, is unlawful. Federal law requires that QFs be paid based upon the utilities' avoided cost and lists the utility data required to calculate avoided costs. 18 C.F.R. §292.302. The avoided cost is the last incremental purchase on the margin; this relevant information was not provided to the QF parties. Lack of access to information rendered the QFs unable to determine the actual utility avoided cost or to present that position to the Commission.⁷

⁴ "CAC/EPUC respectfully request that the Commission immediately establish an updated as-available capacity payment for Edison." CAC/EPUC Motion for Immediate Action Establishing An Updated, Posted As Available Capacity Payment for Southern California Edison Company, filed May 27, 2005, at 2; *see also* Emergency Motion of Kern River Cogeneration Company for Immediate Relief and Action on Pending Motion, filed July 19, 2005. Also, CAC/EPUC Opening Brief at pp. 83-87.

⁵ CAC/EPUC Opening Comments on the Alternate Decision of Commissioner Grueneich at 14.

⁶ CAC/EPUC Opening Brief at pp. 57-74.

⁷ CAC/EPUC Comments on the Proposed Decision of ALJ Halligan (May 25, 2007) at 25.

While the Commission may consider certain information confidential and may use confidential information in its proceedings, it is unlawful to conduct those proceedings with an absolute ban on access to relevant, material information.⁸

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Alcantar", with a long horizontal flourish extending to the right.

Michael Alcantar
Rod Aoki

Counsel to the Cogeneration
Association of California

October 25, 2007

A handwritten signature in black ink, appearing to read "Evelyn Kahl", with a long horizontal flourish extending to the right.

Evelyn Kahl
Nora Sheriff

Counsel to the Energy Producers
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⁸ CAC/EPUC Opening Brief at pp. 52-56.

I, Amie Burkholder, hereby certify that I have caused the foregoing document to be served via Electronic Service on all parties on the attached service list pursuant to the Commission's Rules of Practice and Procedure.

Dated October 25, 2007, at San Francisco, California.

A handwritten signature in black ink that reads "Amie Burkholder". The signature is written in a cursive style with a large, stylized "B".

Amie Burkholder

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